

STATE OF MICHIGAN
COURT OF APPEALS

VALERIE DURBIN,

Plaintiff-Appellee,

v

RANDALL C. MONDAY,

Defendant-Appellant.

UNPUBLISHED

March 10, 2015

No. 322027

Macomb Circuit Court

LC No. 2013-002166-DM

Before: SERVITTO, P.J., and STEPHENS and M. J. KELLY, JJ.

STEPHENS, J. (*concurring*)

I concur in the majority’s well written and well reasoned opinion. I write separately only to comment on the analysis of the trial court’s findings under MCL 722.23(c). The trial court found that this factor strongly favored Durbin. In doing so, it commented only on the relative incomes of the parties. I do not believe that this factor can be judged solely on income but also requires an examination of the disposition or willingness to give the child basic needs.¹ That said, even if the trial court clearly erred in relying solely on the income disparity to weigh this factor strongly in favor of Durbin, the record supports the court’s overall analysis and I would not disturb it based on this singular consideration.

/s/ Cynthia Diane Stephens

¹ See *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008) (“Factor c does not contemplate which party earns more money; it is intended to evaluate the parties’ *capacity* and *disposition* to provide for the children’s material and medical needs.”)